S.B.CIVIL WRIT PETITION NO.2159/2007
(Ram Swaroop Sharma Vs. State of Rajasthan & Anr.)

Date of order : 23rd October 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. B.S. Sachan, for the petitioner.
Mr.Rameshwar Dave, Dy.G.A.

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BY THE COURT:

This petition has been filed in the month of January 2007 seeking directions to the respondents to consider the petitioner's candidature for appointment to the post of Teacher Gr.III under the advertisement No.1/98 issued by Zila Parishad, Chittorgarh on 13.06.1998 (Annex.A/1). Having heard learned counsel for the petitioner and having examined the case of the petitioner with reference to the decision of the Hon'ble Supreme Court dated 30.07.2002 in the case of Kailash Chand Sharma etc. vs. State of Rajasthan and others: 2002 AIR SCW 3276, this Court is clearly of opinion that the present one remains a frivolous petition and deserves to be rejected.

Under the aforesaid advertisement dated 13.06.1998 (Annex.A/1) applications were invited for appointments to the posts of primary school teachers; and as per the relevant circulars the applicants were, inter alia, to be allotted bonus marks on the basis of their residence. Such proposition of bonus marks on the basis of residence had been challenged in relation to the selections of teacher Grade II and III pursuant to

advertisement issued by the Director, Primary and Secondary Education during the year 1995 and came to be struck down by a Larger Bench decision of this Court in the case of Deepak Kumar Suthar Vs. State of Rajasthan and others: 1999 (2) RLR 692 (FB). Following the said decision in Deepak Kumar, the provision for bonus marks on the basis of residence as made in the advertisements issued by Zila Parishads for selections to the posts of primary school teachers during the year 1998-99 (like the one in question in the present petition) was dealt with and struck down by the judgment delivered by the Larger Bench of this Court in the case of Kailash Chand Sharma Vs. State of Rajasthan and others on 18.11.1999. However, Larger Bench of this Court, in the peculiar circumstances of the case, made the decision operative prospectively.

In appeal, the Hon'ble Supreme Court agreed with the conclusion of this Court to the extent it was held that no guidelines were discernible from the impugned circular as to the identification of the residence of the applicants; and found that the provision of according benefit of bonus marks on the basis of residence was in conflict with Article 14 of the Constitution of India. However, having regard to the rival contentions and taking into view the factual scenario and to balance the competing claims, the Hon'ble Supreme Court applied the principle of prospective overruling and did not consider it appropriate to

interfere with the appointments already made upto 17.11.1999 i.e., before the judgment was delivered by this Court in Kailash Chand Sharma's case. The Hon'ble Supreme Court confined the relief to the candidates who had filed the writ petitions before the High Court and issued the following directions:-

> "51. Having due regard to the rival contentions adverted to above and keeping in view the factual scenario and the need to balance the competing claims in the light of acceptance of prospective overruling in principle, we consider it just and proper to confine the relief only to the petitioners who moved the High Court and to make appointments made on or after 18-11-1999 in any of the districts subject to the claims of the petitioners. Accordingly, we direct:
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> 1. The claims of the writ petitioners should be considered afresh in the light of this judgment vis-a-vis the candidates appointed on or after 18-11-1999 or those in the select list who are yet to be appointed. On such consideration, if those writ petitioners are found to have superior merit in case the bonus marks of 10% and/or 5% are excluded, they should be offered appointments, if necessary, by displacing the candidates appointed on or after 18-11-1999 .
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> 2. The appointments made upto 17-11-1999 need not be reopened and reconsidered in the light of the law laid down in this judgment.
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> 3. Writ Petition No.542/2000 filed in this Court under Article 32 is hereby dismissed as it was filed nearly one year after the judgment of the High Court and no explanation has been tendered for not approaching the High Court under Article 226 at an earlier point of time."

Now, the present petitioner by filing this writ petition in the month of January 2007 claims that he stands in merit of general

category candidates with 62.26% marks whereas appointment has been offered by the respondent Zila Parishad after resettling the merit with reference to the directions of the Hon'ble Supreme Court to a general category candidate having 59.61% marks. Thus, the petitioner claims that less meritorious persons have been appointed and his higher merit standing has been illegally ignored. The petitioner served a notice through lawyer on 05.04.2006 (Annex.A/10) that had been replied by the District Education Officer, Elementary Education, Chittorgarh on 01.06.2006 (Annex.A/11) pointing out that the selections and appointments have been made in pursuance of the directions of the Hon'ble Supreme Court in the aforesaid decision dated 30.07.2002; and the petitioner being not eligible in terms of the directions of the Hon'ble Supreme Court could not be appointed. Learned counsel for the petitioner attempted to assert the right of the petitioner with the argument that the candidature of the petitioner had been pending consideration; and the Hon'ble Supreme Court has not said that the candidate whose candidature was pending was not to be considered at the time of resettling the merit and according appointments.

The submission made on behalf of the petitioner remains spineless and directly in conflict with the directions of the Hon'ble Supreme Court.

A comprehension of the matter makes it clear that the

persons who felt themselves being denied equal opportunity of consideration in the matter of such appointments challenged allowing of bonus marks for the purpose of preparation of merit at the relevant time. This Court though upheld such challenge, yet confined the relief prospectively without upsetting the appointments already made. By the time the matter reached the Hon'ble Supreme Court, various other appointments had been made. In an overall view of the matter, the Hon'ble Supreme Court considered it just and proper to confine the relief only to the petitioners who had moved the High Court. The directions were for consideration of the claims of the writ petitioners afresh in the light of the judgment of the Hon'ble Supreme Court vis-a-vis the candidates appointed on or after 18.11.1999 or those in the select list who were yet to be appointed. Only those writ petitioners were to be offered appointments who would stand in superior merit after exclusion of bonus marks, if necessary by displacing the candidates appointed on or after 18.11.1999. Noteworthy it is that a writ petition filed directly to the Supreme Court under Article 32 of the Constitution of India was dismissed for having been filed one year after the judgment of the High Court without any explanation for not approaching the High Court under Article 226 at an earlier point of time.

With the relief in Kailash Chand Sharma's case having been confined to the writ petitioners of the said litigation only;

and the present petitioner having taken up this litigation now, after serving a notice only on 05.04.2006, obviously stands no ground. Nothing is forthcoming as to what prevented the petitioner from taking up the matter at the relevant time. The present writ petition appears to be nothing but an adventure into unnecessary litigation.

In any case, in the face of specific directions of the Hon'ble Supreme Court; and then, for inordinate delay and laches, the petitioner is not entitled for any relief.

The petition fails and is, therefore, rejected.

(DINESH MAHESHWARI),J.

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